

## ENVIRONMENTAL PROTECTION COMMISSION[567]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code chapters 455B and 455D, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 122, “Cathode Ray Tube Device Recycling,” Iowa Administrative Code.

These amendments are being proposed in an effort to promote convenient cathode ray tube (CRT) recycling for consumers without compromising protection of the environment. This will be accomplished by:

- Removing the requirements for short-term collections.
- Replacing the permit requirement for facilities that collect CRTs with a registration requirement.
- Providing collection and storage requirements for registered collection points including limiting the number of CRTs on site to 2,000, limiting the storage time to one year, and requiring a training program for collection site employees.
- Increasing the length of the CRT recycling permit from three years to five years.
- Removing the requirement for DNR-approved training for staff of CRT recycling facilities.

Any interested person may make written suggestions or comments pertaining to the proposed amendments on or before 4:30 p.m. on February 2, 2010. Such written materials should be directed to Theresa Stiner, Land Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-8895; or E-mail [Theresa.Stiner@dnr.iowa.gov](mailto:Theresa.Stiner@dnr.iowa.gov). Persons wishing to convey their views orally should contact Ms. Stiner at (515)281-8646.

When submitting comments, stakeholders are encouraged by the Department to utilize the following guidelines. These guidelines aid the Department in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments on behalf of a business or organization or as an individual.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language to improve the specific rule(s) and explain why.

A public hearing will be held on February 2, 2010, from 2 to 3 p.m. in the Fifth Floor West Conference Room, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources to advise of specific needs.

These amendments are intended to implement Iowa Code chapters 455B and 455D.

The following amendments are proposed.

- ITEM 1. Rescind subrule **122.2(5)**.
- ITEM 2. Rescind the definition of “Short-term CRT collection” in rule **567—122.3(455B,455D)**.
- ITEM 3. Rescind rules **567—122.4(455B,455D)** and **567—122.5(455B,455D)**.
- ITEM 4. Renumber rule **567—122.6(455B,455D)** as **567—122.4(455B,455D)**.
- ITEM 5. Amend renumbered rule 567—122.4(455B,455D) as follows:

**567—122.4(455B,455D) CRT recycling permits.**

**122.4(1) Permit required.** A CRT recycling facility ~~or CRT collection facility~~ shall not be constructed or operated without a permit from the department.

**122.4(2) CRT recycling permit exemption.** If a CRT recycling facility ~~or CRT collection facility~~ is located at a permitted ~~recycling or composting facility~~ or sanitary disposal project, it shall not require its own permit; instead, the CRT recycling activities shall be amended into the host facility’s permit.

**122.4(3) Construction and operation.** CRT recycling facilities ~~and CRT collection facilities~~ shall be constructed and operated according to the plans and specifications approved by the department and the conditions of the permit. The approved plans and specifications shall constitute a condition of the permit.

**122.4(4) Transfer of title and permit.** If title to a CRT recycling facility ~~or CRT collection facility~~ is transferred, then the department shall transfer the permit within 60 days if the department has found that the following requirements have been met:

*a. and b.* No change.

**122.4(5) to 122.4(7)** No change.

**122.4(8) Duration and renewal of permits.** A permit shall be issued and may be renewed for a period of ~~three~~ five years, unless otherwise authorized by the department.

**122.4(9) and 122.4(10)** No change.

- ITEM 6. Adopt the following new rule 567—122.5(455B,455D):

**567—122.5(455B,455D) Registration for CRT collection facilities.** A CRT collection facility shall register with the department using Form 542-0060.

- ITEM 7. Adopt the following new rule 567—122.6(455B,455D):

**567—122.6(455B,455D) CRT collection and storage requirements for registered collection points.**

**122.6(1)** CRT storage at a registered collection site shall be limited to 48 Gaylord boxes or the equivalent containing no more than 2,000 CRTs.

**122.6(2)** A CRT shall not be stored at a registered collection point for more than one year.

**122.6(3)** All CRTs shall be stored in a building, shipping container, or enclosed vehicle that provides protection from the elements.

**122.6(4)** Access to the CRT storage area shall be secured during nonbusiness hours.

**122.6(5)** The CRT storage area shall be free of other solid waste, other than in designated storage areas, except for incidental amounts of solid waste that are not discarded CRTs.

**122.6(6)** Containers or packages shall be labeled and transported in compliance with state and federal Department of Transportation (DOT) rules.

**122.6(7)** Any container holding CRTs shall be clearly labeled with the contents of the container and the date the first CRT was placed in the container.

**122.6(8)** The CRT collection facility shall maintain the following records on site for a minimum of three years.

*a.* The total amount of CRTs received in a calendar year.

*b.* The total amount of CRTs shipped for recycling or reuse in a calendar year.

*c.* All shipping papers, manifests, and bills of lading for CRTs shipped from the facility.

**122.6(9)** The registrant must annually provide information to all employees who handle or have responsibility for managing discarded CRTs. The information shall describe proper handling, safety,

and emergency procedures appropriate for discarded CRTs. A training log shall be maintained on site by the registrant and shall contain the following information:

- a. A copy of the information provided to the employees;
- b. The names of the employees who received the information; and
- c. The date the training was provided to the employee.

ITEM 8. Rescind rules **567—122.8(455B,455D)** and **567—122.9(455B,455D)**.

ITEM 9. Renumber rules **567—122.10(455B,455D)** to **567—122.28(455B,455D)** as **567—122.7(455B,455D)** to **567—122.25(455B,455D)**.

ITEM 10. Amend renumbered subrule 122.8(1) as follows:

**122.8(1)** A CRT recycling facility permit applicant shall submit the following permit application information to the department:

- a. and b. No change.
- c. A map or aerial photograph locating the boundaries of the site and identifying:
  - (1) to (4) No change.
  - (5) The 100-year flood plain pursuant to ~~rule 122.12(455B,455D)~~ rule 567—122.9(455B,455D).
- d. to i. No change.
- j. Site plans detailing how the site will comply with ~~rule 122.13(455B,455D)~~ rule 567—122.10(455B,455D), including floor plans of buildings where discarded CRTs will be handled and the location within each building for specific recycling activities.
- k. A plan of operations detailing how the site will comply with ~~rules 122.14(455B,455D)~~ rules 567—122.11(455B,455D) to 122.22(455B,455D) ~~567—122.19(455B,455D)~~.
- l. An emergency response and remedial action plan (ERRAP) pursuant to ~~rule 122.23(455B,455D)~~ rule 567—122.20(455B,455D).
- m. A reporting plan detailing how the site will comply with ~~rule 122.25(455B,455D)~~ rule 567—122.22(455B,455D).
- n. A closure plan detailing how the site will comply with ~~rule 122.27(455B,455D)~~ rule 567—122.24(455B,455D).

ITEM 11. Amend renumbered subrule 122.17(3) as follows:

**122.17(3)** Any hazardous condition shall be immediately contained and remedied with proper equipment and procedures pursuant to 567—Chapter 131 and the emergency response and remedial action plan (ERRAP) pursuant to ~~rule 122.23(455B,455D)~~ rule 567—122.20(455B,455D). Within six hours of the release, the department field office with jurisdiction over the spill or release location shall be notified.

ITEM 12. Amend renumbered subrule 122.19(2) as follows:

**122.19(2)** Discarded CRTs and materials derived from discarded CRTs shall not be speculatively accumulated at a permitted CRT recycling facility without the permit holder obtaining and maintaining financial assurance for the additional CRTs in accordance with rule 567—122.25(455B,455D). Speculative accumulation occurs when a facility cannot demonstrate that the amount of discarded CRTs and materials derived from discarded CRTs leaving the facility within a 12-month time period is greater than 75 percent, by weight or volume, of the discarded CRTs and materials derived from discarded CRTs received by the facility within a 12-month time period.

ITEM 13. Amend renumbered subrule 122.21(1), introductory paragraph, as follows:

**122.21(1)** *General training.* ~~Beginning July 1, 2005, all~~ All employees of a CRT recycling facility involved in activities relevant to CRT recycling shall be trained ~~on~~ in the following requirements and procedures as appropriate to the employees' specific job responsibilities:

ITEM 14. Rescind and reserve renumbered subrule **122.21(2)**.

ITEM 15. Amend renumbered subrules 122.22(3) and 122.22(4) as follows:

**122.22(3)** The percentage of materials covered by ~~subrules 122.25(1)~~ subrules 122.22(1) and 122.25(2) 122.22(2) received from businesses and institutions.

**122.22(4)** The percentage of materials covered by ~~subrules 122.25(1) and 122.25(2)~~ subrules 122.22(1) and 122.22(2) received from households.

ITEM 16. Amend renumbered rule 567—122.23(455B,455D) as follows:

**567—122.23(455B,455D) Record-keeping requirements for CRT recycling facilities.** All CRT recycling facilities shall maintain the following records, on a calendar-year basis, for three years:

**122.23(1)** No change.

**122.23(2)** The name, address and contact information for shipments reported in ~~subrule 122.26(1)~~ subrule 122.23(1).

**122.23(3) to 122.23(6)** No change.

**122.23(7)** Information related to the management of spills and releases pursuant to ~~rule 122.20(455B,455D)~~ rule 567—122.17(455B,455D).

**122.23(8)** Information related to the management of CRT fluff pursuant to ~~rule 122.21(455B,455D)~~ rule 567—122.18(455B,455D).

**122.23(9)** Information related to training requirements ~~and a list of individuals who have received DNR-approved training pursuant to subrule 122.24(2)~~ pursuant to subrule 122.21(1).

ITEM 17. Amend renumbered rule 567—122.25(455B,455D), introductory paragraph, as follows:

**567—122.25(455B,455D) Financial assurance requirements for cathode ray tube (CRT) ~~collection and recycling facilities~~.** Permitted CRT ~~collection and recycling~~ facilities must obtain and submit a financial assurance instrument to the department for the storage of solid waste, discarded CRTs and materials derived from discarded CRTs at the site in accordance with this rule. The financial assurance instrument shall provide monetary funds to properly dispose of solid waste, discarded CRTs and materials derived from discarded CRTs that may remain at a site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

ITEM 18. Amend renumbered subrule 122.25(1) as follows:

**122.25(1)** No permit without financial assurance. The department shall not issue or renew a permit to an owner or operator of a CRT ~~collection or recycling~~ facility until a financial assurance instrument has been submitted to and approved by the department.

ITEM 19. Amend renumbered subrule 122.25(2) as follows:

**122.25(2)** Proof of compliance. Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted to the department ~~by July 1, 2008, or at the time of application for a permit for a new CRT collection or recycling facility.~~ The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

ITEM 20. Amend renumbered subrule 122.25(3) as follows:

**122.25(3)** Use of one financial assurance instrument for multiple permitted activities. CRT ~~collection or recycling~~ facilities required to maintain financial assurance pursuant to any other provisions of 567—Chapters 100 to 123 may satisfy the requirements of this rule by the use of one financial assurance instrument if the permit holder ensures that the instrument provides financial assurance for an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities covered.

ITEM 21. Amend renumbered subrule 122.25(4) as follows:

**122.25(4)** ~~The estimate submitted to the department must account for at least the following factors determined by the department to be minimal necessary costs for closure pursuant to rule 122.27(455B,455D):~~ CRT recycling facilities shall have financial assurance coverage equal to one dollar per pound of CRTs determined to be speculatively accumulated in accordance with subrule 122.19(2).

~~a. CRT collection facilities shall have financial assurance coverage equal to one dollar per pound stored above the permitted storage capacity of 48 Gaylord boxes or the equivalent containing no more than 2,000 CRTs, in accordance with subrule 122.8(1).~~

~~b. CRT recycling facilities shall have financial assurance coverage equal to one dollar per pound of CRTs determined to be speculatively accumulated in accordance with subrule 122.8(7).~~

ITEM 22. Amend renumbered subrule **122.25(5)**, introductory paragraph, as follows:

**122.25(5)** Acceptable financial assurance instruments. The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with ~~subrule 122.28(4)~~ subrule 122.25(4) and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee as follows:

ITEM 23. Amend renumbered paragraph **122.25(5)“a”** as follows:

a. *Secured trust fund.* The owner or operator of a CRT ~~collection or~~ recycling facility or an entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) to (6) No change.

ITEM 24. Amend renumbered paragraph **122.25(5)“b”** as follows:

b. *Local government dedicated fund.* The owner or operator of a publicly owned CRT ~~collection or~~ recycling facility or a local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedicated fund that conforms to the requirements of this paragraph.

(1) to (3) No change.

ITEM 25. Amend renumbered paragraph **122.25(5)“d”** as follows:

d. *Letter of credit.* The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(1) and (2) No change.

(3) The letter of credit must be irrevocable and must be issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph ~~122.28(5)“a.”~~ 122.25(5)“a.” If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. ~~The state shall not be considered a party to this credit transaction.~~

ITEM 26. Amend renumbered subparagraph **122.25(5)“e”(1)** as follows:

(1) The terms of the written guarantee must provide that within 30 days of the owner’s or operator’s failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. No change.

2. Establish a fully funded secured trust fund as specified in paragraph ~~122.28(5)“a.”~~ 122.25(5)“a” in the name of the owner or operator (payment guarantee); or

3. No change.

ITEM 27. Amend renumbered subparagraph **122.25(5)“e”(5)** as follows:

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the facility’s official files:

1. No change.

2. A letter signed by a certified public accountant and based upon a certified audit that:
  - Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by ~~subrule 122.28(4)~~ subrule 122.25(4); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
  - Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs ~~122.28(5)“e”(2), (3) and (4)~~ 122.25(5)“e”(2), (3) and (4).
3. No change.

ITEM 28. Amend renumbered subparagraph **122.25(5)“f”(1)** as follows:

(1) The terms of the written guarantee must provide that within 30 days of the owner’s or operator’s failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. No change.
2. Establish a fully funded secured trust fund as specified in paragraph ~~122.28(5)“a”~~ 122.25(5)“a” in the name of the owner or operator (payment guarantee); or
3. No change.

ITEM 29. Amend renumbered subparagraph **122.25(5)“f”(6)** as follows:

(6) The local government owner or operator must submit to the department the following items:

1. No change.
2. A copy of the guarantor’s most recent annual financial audit report indicating compliance with the financial ratios required by numbered paragraph ~~122.28(5)“f”(2)“2,”~~ 122.25(5)“f”(2)“2,” if applicable, and the requirements of subparagraphs ~~122.28(5)“f”(3) and (4)~~ 122.25(5)“f”(3) and (4).
3. A letter signed by the local government’s chief financial officer that lists all the current cost estimates covered by the guarantor, as described in ~~subrule 122.28(4)~~ subrule 122.25(4); and that provides evidence and certifies that the local government meets the conditions of subparagraphs ~~122.28(5)“f”(2), (3), (4) and (5)~~ 122.25(5)“f”(2), (3), (4) and (5).

ITEM 30. Amend renumbered paragraph **122.25(6)“d”** as follows:

*d.* The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, “proper closure” means completion of all items pursuant to ~~rule 122.27(455B,455D)~~ rule 567—122.24(455B,455D) and ~~subrule 122.28(4)~~ subrule 122.25(4).